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7 Bank

8  
9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11  
12 HENRY HO,

13 Plaintiff,

14 v.

15 FIRST REPUBLIC BANK, a California  
Corporation; and Does 1-10,

16 Defendant.  
17

Case No. 2:23-cv-06317-GW-MRW

**FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER  
FOR FIRST REPUBLIC BANK'S  
REQUEST FOR STAY OF ENTIRE  
ACTION FOR NINETY DAYS  
PURSUANT TO 12 U.S.C.  
§1821(d)(12)**

18  
19 **TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF**  
20 **RECORD:**

21 The Federal Deposit Insurance Corporation ("FDIC"), an agency of the  
22 United States of America, in its capacity as Receiver for First Republic Bank  
23 (hereinafter, the "FDIC-R"), by and through undersigned counsel, and pursuant to  
24 12 U.S.C. §1821(d)(12)(A), hereby respectfully requests that the Court issue an  
25 Order staying the entire above-captioned action for a period of 90 days. In support  
26 of this Request, the FDIC-R states as follows:  
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**I. CLOSURE OF FIRST REPUBLIC BANK, SUBSTITUTION OF  
FDIC-R, AND REMOVAL**

On May 1, 2023, First Republic Bank was closed by the California Department of Financial Protection and Innovation and the FDIC was appointed First Republic Bank's receiver.

By operation of federal law, the FDIC-R succeeded to all of First Republic Bank's rights, titles, powers, and privileges, including First Republic Bank's status as a party in the arbitration before FINRA Dispute Resolution, Case No. 20-00555 (the "FINRA Arbitration"). *See* 12 U.S.C. §§ 1821(d)(2)(A) and 1821(d)(2)(B).

Based on the foregoing, on July 12, 2023, the FDIC-R substituted into the place of First Republic Bank as an answering and defending party in the AAA Arbitration and subsequently removed the entire case to the United States District Court for the Central District of California.

**II. INITIAL 90 DAY STAY OF THE PROCEEDINGS**

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") provides, in pertinent part:

After appointment of a . . . receiver for an insured depository institution, the . . . receiver may request a stay for a period not to exceed --...(ii) 90 days, in the case of any receiver, in any judicial action or proceeding to which such institution is or becomes a party.

12 U.S.C. §1821(d)(12)(A).

Importantly, the express language of §1821(d)(12) makes clear that the granting of the stay is mandatory upon the FDIC-R's request. Specifically, 12 U.S.C. §1821(d)(12)(B), which is entitled "Grant of stay by all courts required," goes on to state:

Upon receipt of a request by any ...receiver pursuant to [12 U.S.C. §1821(d)(12)(A)] for a stay of any judicial

1 action or proceeding in any court with jurisdiction of such  
2 action or proceeding, the Court **shall** grant such stay as to  
3 all parties.

4 (emphasis added); *see also*, *Damiano v. FDIC*, 104 F.3d 328, 334 (11<sup>th</sup> Cir. 1997)  
5 (holding that the receiver has “the right . . . to stay a pending action within the first  
6 ninety days of being appointed as a receiver” under 12 U.S.C. § 1821(d)(12), and  
7 that Section 1821(d)(12) “requires the court to grant such stay.”); *Praxis Properties,*  
8 *Inc. v. Colonial Sav. Bank*, 947 F.2d 49, 67 (3<sup>rd</sup> Cir. 1991) (“Congress simply has  
9 left no room in section 1821(d)(12)(B) for courts to maneuver and balance [the  
10 receiver’s] need for a stay against the possibility that delay will result in irreparable  
11 harm to the party opposing the stay.” Rather, Congress made the stay mandatory to  
12 prevent the receiver from “having to expend precious time and resources persuading  
13 a court about its need for a stay and refuting the other party’s assertions of  
14 irreparable injury.”); *Nassirpour v. F.D.I.C.*, 2008 U.S. Dist. 2008 WL 5412432, \*2  
15 (C.D. Cal. Dec. 29, 2008) (affirming that, if a receiver requests a stay within 90 days  
16 of its appointment, it is “automatically entitled to such a stay” under 12 U.S.C.  
17 Section 1821(d)(12)).

18 Although no showing of good cause or other reason is required in order for  
19 the FDIC to obtain this mandatory stay, it should be noted that a stay of this action is  
20 particularly appropriate. Specifically, the Congressional intent of the 90-day stay  
21 set forth in 12 U.S.C. § 1821(d)(12)(B) was to provide the FDIC with breathing  
22 room to familiarize itself with a case as “[t]he appointment of a conservator or  
23 receiver can often change the character of litigation; the stay gives the FDIC a  
24 chance to analyze the pending matters and decide how best to proceed.” H.R.Rep.  
25 No. 54(1), 101st Cong., 1st Sess. 331 (1989), reprinted in 1989 U.S. Code Cong. &  
26 Admin. News 86, 127.

27 In addition, and more importantly, the FDIC-R has recently taken measures to  
28 implement the mandatory administrative claims process established under 12 U.S.C.

1 §§ 1821(d)(3) through (13). As a matter of law, Plaintiff Henry Ho may not litigate  
 2 or otherwise pursue the claims asserted in this case against the FDIC-R unless and  
 3 until it has first complied with – and completed – Section 1821’s mandatory  
 4 administrative claims process. That administrative claims process, set forth in 12  
 5 U.S.C. §§ 1821(d)(3) through (13), centralizes the initial consideration and  
 6 resolution of claims against a failed financial institution by requiring that all claims  
 7 be submitted to the FDIC-R by a date certain established by the Receiver, *i.e.*, the  
 8 “claims bar date.” The FDIC-R then has up to 180 days to review each claim, and  
 9 grant or deny those claims (in whole or in part), without the delay and expense of  
 10 litigation. *See* 12 U.S.C. § 1821(d)(5)(A)(i). Accordingly, an additional stay of this  
 11 case will likely be appropriate at some point in the future, to allow for completion of  
 12 the administrative claims process. The FDIC-R will make that request by separate  
 13 motion, if and when it becomes necessary.

### 14 **III. CONCLUSION**

15 On the basis of the foregoing, the FDIC-R respectfully requests that this Court  
 16 grant this Request and enter an order staying this action for 90 days, together with  
 17 such other and further relief deemed just and proper under the circumstances.

18  
 19 Dated: August 10, 2023

Respectfully submitted,

**ZUBER LAWLER LLP**

JEFFREY J. ZUBER

MICHAEL CARLIN

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 24 By: /s/ Jeffrey J. Zuber

Attorneys for Federal Deposit Insurance  
 Corporation as Receiver for First Republic  
 Bank

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**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Counterclaimant Federal Deposit Insurance Corporation in its Capacity as Receiver for First Republic Bank, certifies that this brief contains 823 words, which complies with the word limit of L.R. 11-6.1.

Dated: August 10, 2023

/s/ Jeffrey J. Zuber  
Jeffrey J. Zuber